

REMARKS

Applicants appreciate the Examiner's acknowledgment of the claim for priority under 35 USC 119.

**SPECIFICATION AND ABSTRACT**

The first sentence of the specification has been updated to reflect that the parent application Ser. No. 09/744,519 is now U.S. Patent 6,604,991.

The abstract has been amended to be only one paragraph and to otherwise improve its form in response to the objections set forth on pages 2 and 3 of the action.

No new matter has been added by the amendments to the abstract.

**DRAWINGS**

Approval of the drawings filed on June 27, 2003 is respectfully requested since numbered paragraph 10 of the Office Action Summary page was not checked.

**CLAIM OBJECTIONS AND REJECTIONS UNDER 35 U.S.C. § 112**

Claims 11 to 24 have been amended to overcome the rejections set forth on pages 3 and 4 of the Action.

**CLAIM REJECTIONS UNDER 35 U.S.C. §102(e)**

Claims 11-24 were rejected under 35 U.S.C. § 102(e) as being anticipated by Evers et al. U.S. Patent No. 5,591,076 for the reasons set forth on page 5 of the Action.

For the reasons set forth hereafter, it is submitted that claims 11-24, as amended, are patentable.

**DOUBLE PATENTING REJECTION**

Claims 11-24 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-16 of U.S. Patent 6,604,991 (parent application) and claims 12-20 of U.S. Patent No. 5,591,076.

As discussed hereafter, a Terminal Disclaimer is being filed with respect to U.S. Patent 6,604,991 and it is believed that the claims as amended are patentable over U.S. Patent No. 5,591,076.

**PATENTABILITY OF THE CLAIMS**

With respect to the rejection of claim 11-24 under 35 U.S.C. § 102(a) as being anticipated by Evers U.S. Patent No. 5,591,076, Applicants note that the Evers patent issued December 3, 1996 and that the present application claims priority of parent application U.S. Serial No. 09/744,519 filed January 25, 2001 and now U.S. Patent 6,604,991. The

parent application which issued into the '991 patent in turn claims priority of PCT application filed July 23, 1999 which in turn is based on a German application filed July 31, 1998. Thus, it is clear that the Evers'076 patent issued more than a year prior to any priority date which can be claimed for the present application. Accordingly, it is believed the Evers'076 patent is a reference under 102(b) and not 102(e).

With respect to the Evers'076 patent, it only refers to obtaining image data by electro-optical imaging of a fish wherein the imaging data comprises information regarding the relative positions of the dorsal and ventral edge fins with respect to the contour of a fish body.

By contrast, the Applicants' claims call for an element for detecting the position of the flesh which is electronically connected with the separating means via a control device and wherein the element for detecting the position of the flesh provides information of at least two different types, i.e., geometric data of the flesh and image data of the flesh so that separating cuts based on the geometrical image data can be made with the separating means.

The geometric data includes information such as the position, size and thickness of flesh to be processed whereas the image data refers to information concerning the

color/shade in order to differentiate between properties of  
fat, flesh, blood, etc.

As compared to the present invention, Evers only discloses data concerning the position/geometry of the flesh and contains no discussion concerning color or shade in order to differentiate between properties of fat, flesh, blood, etc.

Accordingly, Evers does not disclose an element for position detection that provides information to be recorded and processed into data of at least geometric data of the flesh and image data of the flesh so that the separating cuts based on the geometric and image data can be made with the separating means as called for by independent claims 11 and 21 and the claims dependent therefrom. Accordingly, Evers does not disclose or fairly suggest the device set forth in claim 11 and the claims dependent therefrom or the method set forth in claim 21 and the claims dependent therefrom. Accordingly, it is submitted that claims 11-24 are patentable over Evers.

With respect to the double patenting rejection over claims 1-16 of U.S. Patent No. 6,604,991 which issued from the parent application, the Applicants are filing concurrently herewith a Terminal Disclaimer which it is believed overcomes the rejection based on the non-statutory double patenting ground.

With respect to the double patenting rejection over the Evers'076 patent, as noted above, the Evers'076 patent is a reference under 102(b). 37 CFR 1.130(a) states as follows in pertinent part:

"When any claim of an application...is rejected under 35 U.S.C. § 103 on a U.S. patent or a U.S. patent application publication which is not prior art under 35 U.S.C. § 102(b)..."

Since the Evers'076 patent is prior art under 35 U.S.C. § 102(b), a Terminal Disclaimer is not believed appropriate under 37 CFR 1.130.

In any event, as discussed above, it is submitted that the Evers'076 patent does not anticipate Applicants' invention as now claimed under 35 U.S.C. § 102. A Terminal Disclaimer, therefore, is not believed necessary with respect to the Evers'076 patent.

It is further noted that the Evers'076 patent was only cited as of interest and was not specifically applied in the parent application which matured into U.S. Patent 6,604,991.

In view of the foregoing amendments and remarks, Applicants contend that this application is in condition for allowance. Accordingly, reconsideration and reexamination are respectfully requested.

Respectfully submitted,

*Gene W. Stockman*  
Gene W. Stockman  
Registration No. 21,021  
Attorney for Applicant

MATTINGLY, STANGER & MALUR  
1800 Diagonal Road, Suite 370  
Alexandria, Virginia 22314  
(703) 684-1120  
Date: April 30, 2004